

The time is now:

Climate change law and regulation in 2023

Against the background of a summer of wild weather and a looming general election, 2023 looks to be a year in which there will be intense focus on current and future climate change law and policy. Our summary of the key moving parts is below. There's lots going on and the Russell McVeagh and Te Whakahaere team are here to help. Get in touch if we can help, including with internal education or workshops as you prepare for the year ahead. Contact us [here](#) or via your usual Russell McVeagh or Te Whakahaere contact.

Climate change law and regulation: **What to look out for in 2023**

Mandatory climate-related reporting commences

Following the release by the External Reporting Board ("XRB") of final climate standards in December 2022, mandatory climate-relating reporting now applies to around 200 NZ entities for reporting periods commencing 1 January 2023. We expect that many climate-reporting entities will now be well underway in preparing for their disclosures. Please refer to our earlier practical tips available [here](#). The XRB will continue to publish guidance and run webinars throughout this year.

The government also recently concluded [consultation](#) on whether an occupational licensing regime should be introduced for practitioners providing assurance services in relation to the regime, and whether the assurance requirements under the regime should be extended to cover all disclosures in climate statements. Ministers are expected to seek agreement from Cabinet in relation to these proposals in around June of this year.

Sectors impacted: [Financial institutions; listed issuers](#)



Ongoing



Feb 2023

Climate Change Commission to advise on ETS unit and price control settings

The Climate Change Commission is due to advise the Government in February on unit limits and price control settings under the NZ emissions Trading Scheme ("ETS") for the period 2024 – 2028.

Sectors impacted: [Forestry; waste; synthetic gases; industrial processes; fossil fuels; stationary energy; financial institutions](#)



27 Feb 2023

Consultation on reform of the ETS governance framework

The Government is currently undertaking [targeted consultation](#) (following broader consultation in 2021) on proposals relating to market governance of the Emissions Trading Scheme. The proposals include, for example, bringing NZUs within the scope of NZ's financial markets legislation (with associated prohibitions on insider trading and market manipulation), introducing licensing requirements for market operators, introducing an optional centralised exchange for trading NZUs, and regulating NZU advice in the same way as other financial products. Consultation closes on 27 February 2023, with policy decisions to be made later this year.

Other legislation tweaking the ETS is expected this year. In particular, the [Climate Change Response \(Late Payment Penalty and Industrial Allocation\) Amendment Bill](#), which seeks to (amongst other things) correct issues with overallocation of NZUs under the "free allocation" system, has been introduced to Parliament.

Sectors impacted: [Forestry](#); [agriculture](#); [waste](#); [synthetic gases](#); [industrial processes](#); [fossil fuels](#); [stationary energy](#)



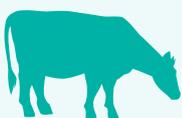
By March 2023

NZX to release revised Corporate Governance Code and ESG Guidance Note

NZX is due to release a revised NZX Corporate Governance Code and ESG Guidance Note in the first quarter of this year, following [consultation](#) in 2022. It is expected that the revised Code will apply for financial years commencing after 1 April 2023, although issuers can voluntarily report against the amendments prior to that time.

Amongst other changes, the proposed revisions to the Code include changes to reflect the coming into force of the mandatory climate-related disclosures regime. The revised ESG Guidance Note will provide additional material to support issuers in relation to the mandatory reporting regime and ESG reporting more broadly.

Sectors impacted: [Listed issuers](#)



Early 2023

Decisions expected on pricing of agricultural emissions

In December of last year, the Government [published a report](#) outlining a proposed system for pricing agricultural emissions following advice from the Climate Change Commission and consultation with the sector. The proposed pricing system is a farm-level split-gas levy that would price different types of emissions separately. Final decisions on the proposed scheme are expected early this year.

Sectors impacted: [Agriculture](#)



By 9 May 2023

Select Committee to report on proposed ESG amendment to directors' duties

In November 2022, the [Companies \(Directors Duties\) Amendment Bill](#) passed its first reading. If passed into law, the duty of directors to act in good faith and the best interests of the company would be amended to specifically note ("to avoid doubt") that directors may take into account recognised ESG factors. The Bill has been referred to the Economic Development, Science and Innovation Select Committee and public submissions closed on 17 January 2023.

Sectors impacted: [All](#)



May 2023

Select Committee to report on RMA reform

Submissions on the Natural and Built Environment Bill and the Spatial Planning Bill closed on 5 February 2023, and the Select Committee is expected to report back to Parliament in May 2023. These reforms are a comprehensive overhaul of the resource management system and will have implications for both mitigation and adaptation in NZ. For more information about changes in the environment, planning and resource management space this year (many of which relate to climate change), see our update [here](#).

Sectors impacted: [All](#)



First half of 2023

National direction for climate change

A National Policy Statement and National Environmental Standard on industrial heat greenhouse gas emissions (including an immediate ban on new industrial low temperature coal burning activities) will come into force in the first half of 2023.

Sectors impacted: [Industrial processes](#)



14 Oct 2023

General election – climate change front and centre

Climate change is likely to be a contested topic in the lead up to the general election, particularly in light of recent extreme weather events. Matters up for debate are likely to include the pricing of agricultural emissions, the role of the emissions trading scheme and how NZ's climate change efforts should be funded (including the balance of funding for mitigation or adaptation activities).

Sectors impacted: [All](#)



30 Nov - 12 Dec

UNFCCC parties to undertake global stocktake at COP28

COP28 will kick off in Dubai in November. Central to the agenda will be the “global stocktake”, which is underway and due to culminate at COP28. The stocktake is designed to evaluate progress in implementation of the Paris Agreement. It is widely expected that the stocktake will reconfirm that the world is currently not on track to meet the goals of the Paris Agreement, further increasing pressure on governments and corporations to do more to bring down emissions.

Amongst other things, the stocktake will be informed by the final report in the Intergovernmental Panel on Climate Change’s Sixth Assessment cycle. This report, the “Synthesis Report”, will integrate and summarise the various other scientific reports published by the IPCC over the past six years.

Sectors impacted: [All](#)



By 31 Dec 2023

Climate Change Commission advice on second emissions reduction plan

The Climate Change Commission is due to produce advice on the second emissions reduction plan this year, following consultation in the second quarter. Organisations wishing to influence the future direction of climate policy in NZ should prepare to engage with that process.

Sectors impacted: [All](#)



End of 2023

Legislation on managed retreat to be introduced

An important pillar of the Government’s proposed adaptation response to climate change is the [introduction of a framework for managed retreat](#), which relates to the strategic relocation of assets and infrastructure away from intolerable risk. The Government proposes to introduce the Climate Adaptation Act this year, which will set out the tools and processes to plan and implement retreats, and aims to address the complex policy and funding issues associated with retreat. Guidance on the Bill is expected in March.

Sectors impacted: [All](#)

Additional developments expected (timing unclear)

**Further forestry changes likely**

In addition to proposed changes to National Environmental Standards (signalled in our update [here](#)) relating to the plantation of exotic forests, the Government has signalled a redesign of the permanent forestry category under the ETS (although the timing of this is unclear). It is possible we will also see other changes in relation to forestry, such as in relation to “slash” following recent extreme weather events.

Sectors impacted: [Forestry](#)

**Bill to be introduced effecting Building Act changes**

The Government expects to introduce a Bill this year effecting [changes to the Building Act 2004](#) announced late last year relating to climate change. For example, the proposed changes introduce mandatory energy performance ratings for public, industrial, and large-scale residential buildings.

Sectors impacted: [Construction](#)

**Decision awaited in significant climate change litigation**

Following a hearing in August last year, a decision from the Supreme Court is now awaited in relation to whether the first tort-based climate change case in NZ, [Smith v Fonterra](#), can proceed to trial. Climate change is likely to continue to feature in litigation over the coming period, including if significant judicial review cases decided last year proceed to appeal.

Sectors impacted: [Industrial processes](#); [agriculture](#); [fossil fuels](#); [stationary energy](#)

**Further policy direction expected from MfE**

The Ministry for the Environment has been tasked with a significant programme of work under the emissions reduction plan and the national adaptation plan. For example, major work streams not outlined above include developing a framework for the voluntary carbon market and the development of a sustainable finance taxonomy. While timing is unclear, we expect to see a number of new policy proposals emerge from MfE this year.

Sectors impacted: [All](#)

International regulations impacting imports and exports

In 2023, there will be continued development of climate-related regulations in other jurisdictions and by international bodies. Two particularly significant developments this year include:



- The International Maritime Organization has introduced new rules relating to the energy efficiency and carbon intensity of ships, affecting NZ importers and exporters. From 1 January 2023, it is mandatory for ships to calculate their energy efficiency and initiate the collection of data for reporting their annual carbon intensity. In 2024, initial ratings will be assigned to ships based on their carbon intensity.
- The EU's Carbon Border Adjustment Mechanism, which is designed to deal with emissions leakage by putting a tariff on carbon intensive goods imported into the EU, will enter a transitional phase on 1 October 2023 (becoming permanent in 2026).

Sectors impacted: [Maritime](#)